giving his opinion. This is precisely such a case. The witness could not describe the appearance of the plaintiff to the jury to show how it made him feel, as well as he could inform the jury by his own impression from seeing the plaintiff. The exception to the opinion rule should have been applied, and the evidence admitted.

EVIDENCE—EXPERT MEDICAL TESTIMONY BASED ON BOTH OBJECTIVE AND SUBJECTIVE SYMPTOMS.—The plaintiff, a street car conductor, sued the defendant railroad company for personal injuries received by reason of defendant's negligence. Several weeks after the injury plaintiff was examined by a physician for the purpose of qualifying him as an expert witness. The physician based his diagnosis both on physical examination and on the history of the injuries and their causes as related by the plaintiff; and on the trial he was allowed to state his opinion based on both the objective and the subjective symptoms. *Held,* that the expert opinion formed by the intelligent diagnosis of both the objective symptoms and the history of the case, including the causes of the injuries, were properly admitted, though not part of the res gestae. *St. Louis & S. F. R. Co.* v. *McFall* (Okla. 1917), 163 Pac. 269.

The above case takes an extremely liberal view, making no distinction between an attending physician and one examining for the express purpose of testifying for the plaintiff. There are cases in Alabama, California, Indiana, Massachusetts, New Jersey, Texas, Vermont, and Wisconsin, holding with the instant case. They go on the theory that a history of the case is usually necessary to reach a correct intelligent diagnosis, which is as important in the case of an expert witness who is to render an opinion, as for an attending physician who is to administer medicine. See *Quaife* v. *The Chicago & N. W. R. R. Co.,* 48 Wis. 513; *Missouri, K. & T. Ry. Co.* v. *Rose,* 19 Tex. Civ. App. 470; *People* v. *Shattuck,* 109 Cal. 673, 42 Pac. 315. A number of states allow past history as basis of the opinion, when stated to an attending physician, but exclude it when given to a physician for the express purpose of qualifying him to testify, on the theory that in the latter case the plaintiff is liable to make dangerous self-serving statements. See *Hintz* v. *Wagner,* 25 N. D. 110, 140 N. W. 729; *Grand Rapids & Ind. R. Co.* v. *Huntley,* 38 Mich. 537, 31 Am. Rep. 321; *Darrington* v. *N. Y. & N. Eng. R. Co.,* 52 Conn. 285, 52 Am. Rep. 590; *James Edward* v. *Illinois Central R. R. Co.,* 161 Ill. App. 630; *Divine* v. *Rothschild,* 178 Ill. App. 13. Statements made to a physician called to treat a patient are usually very dependable; for the patient is anxious to give the physician a true version of the history of the case and of his present condition to enable the physician to make a correct diagnosis. But statements made to a physician called for the purpose of qualifying him as an expert witness are very apt to include all that is favorable to the plaintiff's case and exclude all that is detrimental. Besides there is always the possibility that the patient has given a fraudulent version of his case. There is a tendency to make statements to such a physician strongly self-serving. A few states hold that a physician may base

his opinion both on objective symptoms and on statements of present pains and sensations, but not on statements of past symptoms. *Williams* v. *Great Northern R. Co.,* 68 Minn. 55, 70 N. W. 860. In the following jurisdictions the statement of the past history of the case is held hearsay and inadmissible, the United States Courts, Florida, Georgia, Kansas, Kentucky, Minnesota, Mississippi, Missouri, New Hampshire, New York, North Carolina, and South Carolina. The following are typical cases. *People* v. *Murphy,* 101 N. Y. 126, 4 N. E. 326, 54 Am. Rep. 661; *Atlanta K. & N. Ry. Co.* v. *Gardner,* 122 Ga. 82, 49 S. E. 818; *Gibler* v. *Quincy, Omaha & Kansas City Ry. Co.,* 129 Mo. App. 93, 107 S. W. 1021. The authorities are practically uniform that statements made by the patient about the cause of, and the responsibility for, the injury are not admissible, unless as res gestae. *Citizens St. R. Co.* v *Stoddard,* 10 Ind. App. 278, 37 N. E. 723.

INJUNCTION—RESTRAINING A NUMBER OF ACTS OF PICKETING ON THEORY THAT THEY CONSTITUTE AN UNLAWFUL WHOLE.—The defendant company and its striking employees were enjoined from interfering in any way with the telephone service of the defendant company. One of the strikers, in an intervening petition, asserted his intention to interfere singly and in concert with others with the business of the company, in every peaceable and lawful manner possible. The intervenor and several of the other strikers were attached for violation of the injunction. Upon motions questioning the validity of the proceedings *held* that the injunction was not too broad to be valid under the CLAYTON ACT. *Stephens* v. *Ohio State Telephone Co.* (1917), 240 Fed. 750.

The CLAYTON ACT prohibits the Federal courts from granting an injunction in labor disputes against the doing of any act "which might lawfully be done in absence of such dispute by any party thereto." The court in the principal case says that there is nothing new in this statute; that it represents the view taken universally by the courts before its passage. "What constitutes peaceful picketing may be answered," says the court, "by any fair minded man if this question is asked, 'Would this be lawful if no strike existed?'" In passing on the pleadings of the intervenor, the court says that the declaration of the intention to interfere with the business in concert with others by lawful and peaceful means is practically a confession of an unlawful conspiracy. The court says: "It is a legal proposition, too firmly settled to be disregarded, that two or more persons may not combine to employ activities, in which singly they might lawfully engage, with an intent that the effect of their joint action should be the injury of another." It is submitted that this is sound. An act may be wrongful if committed by an individual, but too insignificant to be regarded as "unlawful" or punishable, while if participated in by many it would be punishable because of its serious consequences. There are a number of Federal cases in accord. *Oxley Stove Co.* v. *Cooper's International Union,* 72 Fed. 695; *Allis-Chalmers Co.* v. *Iron Moulders' Union,* 150 Fed. 155; *Tri-City Cent. Trades Council* v. *Am. Steel Foundries,* 238 Fed. 728. Also see *George Jones Glass Co.* v.